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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

U.S. DISTRICT COURT
N.D. ALABAMA
UNITED STATES OF AMERICA,
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,
AND STATE OF IOWA,

Plaintiffs,

v.

MCWANE, INC.,

Defendant.

Civil Action No. _____

CV-10-JEO-1902-S

NOTICE OF LODGING OF CONSENT DECREE

The United States, by authority of the Attorney General of the United States and through the undersigned attorneys, hereby notifies the Court that, pursuant to 28 C.F.R. § 50.7, the enclosed Consent Decree is being lodged in this civil action concurrently with the filing of this Notice and the Complaint commencing this action. The proposed Consent Decree is subject to a public notice and comment period before it may be entered. Pursuant to Paragraph 87 of the proposed Consent Decree, and 28 C.F.R. § 50.7, the public will have thirty days in which to submit comments to the United States Department of Justice on the proposed Partial Consent Decree. The thirty-day period will begin on the date notice of the lodging of the proposed Consent Decree is published in the Federal Register. After the public comment period has expired, the United States will inform the Court of any public comments received and any responses thereto. If, after reviewing the public comments, the Environment and Natural Resources Division of the United States Department of Justice concludes that the proposed Partial Consent Decree should be entered, the United States will seek its entry as a final order of

the Court. Because of the public comment period, we respectfully request that the Court not execute the proposed Partial Consent Decree at this time

The Consent Decree, if entered, will fully resolve the claims alleged in the Complaint by Plaintiffs, the United States, the Alabama Department of Environmental Management, and the State of Iowa, against McWane, Inc., under the Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq.; the Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq.; the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11001 et seq.; the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f et seq.; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq., and their implementing regulations and permits at twenty-eight of its facilities nationwide.

McWane is a national company operating iron foundries, brass foundries, and various valve and tank manufacturing facilities at twenty-eight facilities in fourteen states (identified in Paragraph 8(j) of the Consent Decree). McWane has four facilities in the Northern District of Alabama, including its headquarters at McWane Pipe in Birmingham, Alabama.

The proposed settlement requires McWane to pay a civil penalty of \$4,000,000, implement a slate of Supplemental Environmental Projects at a cost of \$9,154,050, and complete the final evaluation of a comprehensive, corporate-wide Environmental Management System at all of its facilities. McWane has already undertaken corrective measures to resolve the violations, at a cost of over \$7.6 million. The disclosed violations also revealed several patterns of violations for which the settlement secures injunctive relief. The proposed Consent Decree resolves only the specific violations alleged in the Complaint.

WHEREFORE, plaintiff respectfully requests that this Court receive the proposed Consent Decree for lodging only, and that it refrain from acting upon the same until the period for public comment has expired and the United States has moved for entry of the proposed Consent Decree.

Dated: July 14, 2010

Respectfully submitted,

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural
Resources Division

By:



DEBORAH M. REYHER
Senior Counsel
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-4113

JOYCE VANCE
United States Attorney
Northern District of Alabama

By: Sharon D. Kelly
Sharon D. Kelly
Civil Division Chief
Northern District of Alabama

OF COUNSEL:

Peter Moore, Esq.
Caroline Hermann, Esq.
United States Environmental Protection Agency

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to:

To McWane:

W. Warren Hamel, Esq.
Venable L.L.P.
Two Hopkins Place, Suite 1800
Baltimore, MD 21201-2978
wwhamel@venable.com

To the State of Alabama:

Rebecca E. Patty
Associate General Counsel
Alabama Department of Environmental Management
1400 Coliseum Blvd.
Montgomery, AL 36110-2059
REP@adem.state.al.us

To the State of Iowa:

Brian Hutchins
Air Compliance and Monitoring Section
Iowa Department of Natural Resources
Air Quality Bureau
7900 Hickman Road, Suite 1
Windsor Heights, IA 50324
Brian.Hutchins@DNR.state.ia.us

David R. Sheridan
Assistant Attorney General
Environmental Law Division
Iowa Department of Justice
Lucas State Office Building
321 East 12th Street, Room 018
Des Moines, Iowa 50319
DSHERID@ag.state.ia.us


Sharon D. Kelly
Assistant United States Attorney

PROPOSED
CONSENT DECREE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA,
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,
AND STATE OF IOWA,

Plaintiffs,

v.

MCWANE, INC.,

Defendant.

Civil Action No. [CV] 10-JEO-1902-S

CONSENT DECREE

WHEREAS, Plaintiffs, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), the State of Alabama on behalf of the Alabama Department of Environmental Management, and the State of Iowa (collectively "Plaintiffs"), have filed a Complaint alleging that Defendant, McWane, Inc., ("McWane") has violated numerous provisions of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq.; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq.; the Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq.; the reporting requirements of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9603(a); the Clean Water Act ("CWA"), 33 U.S.C. § 1311 et seq.; the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004(a); Ala. Code §§ 22-22-1 et seq.; 22-30-1 et seq.;

and Iowa Code §§ 455B.131 et seq. and 455B.171 et seq., at twenty-eight of its various manufacturing facilities across the country;

WHEREAS, McWane has cooperated with the United States to investigate the violations addressed in the Complaint, has undertaken numerous corrective actions, and has established a comprehensive Environmental Management System ("EMS") to promote future environmental compliance at all its Facilities nationwide;

WHEREAS, the objectives of the Parties in this Consent Decree are to document prior corrective action taken by McWane during the negotiation of this settlement, to provide for appropriate injunctive relief to complete additional corrective action, to conduct a final review of the Environmental Management System, and to assess an appropriate penalty to resolve the allegations of the Complaint;

WHEREAS, by agreeing to entry of this Consent Decree, McWane makes no admission of law or fact with respect to any of the allegations set forth in the Complaint filed herewith and referenced in this Consent Decree, and denies any violation of any law or regulation identified therein;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties, **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 309(b) of the CWA, 33 U.S.C. § 1319(b); Sections 109(c) and 113(b) of CERCLA, 42 U.S.C. §§ 9609(c) and 9613(b); Sections 325(b)(3) and 325(c)(4) of EPCRA, 42 U.S.C. §§ 11045(c)(4) and 11045(b)(3); Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Section 17(a)(1) of TSCA, 15 U.S.C. § 2616(a)(1); Section 1414 of SDWA, 42 U.S.C. § 300g-3; and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, because: 1) the action arises in part under the laws of the United States; 2) the United States is a plaintiff; and 3) the action is brought in part to recover penalties incurred under Acts of Congress. Venue is proper in this judicial district pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 309(b) of the CWA, 33 U.S.C. § 1319(b); Section 109(c) of CERCLA, 42 U.S.C. § 9609(c); Sections 325(b)(3) and 325(c)(4) of EPCRA, 42 U.S.C. §§ 11045(b)(3) and 11045(c)(4); Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Section 17(a)(2) of TSCA, 15 U.S.C. § 2616(a)(2); and pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because some of the events giving rise to the claims alleged in this Complaint occurred in this district, McWane conducts business in a Facility located in this district, and McWane's corporate headquarters is in this District. For purposes of this Decree, or any action to enforce this Decree, EPA and McWane consent to the Court's jurisdiction over this Decree and any such action and over McWane, and consent to venue in this judicial district. This Court has supplemental jurisdiction over the State law claims asserted by Alabama and Iowa pursuant to 28 U.S.C. § 1367.

2. Pursuant to RCRA § 3008(a)(2), 42 U.S.C. § 6928(a)(2), CAA § 113(b), 42 U.S.C. § 7413(b), CWA § 309(b), 33 U.S.C. § 1319(b); and SDWA §§ 1414(a)(1)(B) & (a)(2)(B), 42 U.S.C. §§ 300g-3(a)(1)(B) & (a)(2)(B), notice of the commencement of this action has been given to the following states: Alabama, California, Illinois, Indiana, Iowa, Missouri, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, Utah, and Virginia.

3. For purposes of this Consent Decree, McWane agrees that the Complaint states claims upon which relief may be granted pursuant to RCRA, 42 U.S.C. §§ 6901 et seq., TSCA, 15 U.S.C. § 2601 et seq., the CAA, 42 U.S.C. § 7401 et seq.; the reporting requirements of CERCLA, 42 U.S.C. § 9603(a); the CWA, 33 U.S.C. § 1311 et seq.; the SDWA, 42 U.S.C. § 6901 et seq.; and EPCRA, 42 U.S.C. § 11004(a).

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, the States, and McWane and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of a Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve McWane of its obligation to ensure that the terms of the Decree are implemented, unless (1) the transferee agrees to undertake any unperformed obligations required under this Decree and to be substituted for the Defendant as a Party under the Decree and thus be bound by the terms thereof; and (2) the United States, after consultation with the appropriate State if the Facility at issue lies within one of the States, consents to relieve Defendant of its obligations. The United States' decision to refuse to approve the substitution of the transferee for the Defendant shall not be subject to judicial review.

At least thirty (30) Days prior to such transfer, McWane shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed transfer agreement, to EPA (headquarters and appropriate region), and the United States Department of Justice, in accordance with Section XIV of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

6. McWane shall (1) provide a copy of this Consent Decree to a) its President/CEO, Executive Vice Presidents, and General Counsel, b) Corporate Environmental Group, and c) leadership employees of each Facility whose duties include environmental management or compliance responsibilities (the General Manager, Plant Manager, Environmental Manager, and Maintenance Manager of each Facility); (2) place an electronic version of the Consent Decree on its EMS website; (3) post notice of lodging of the Consent Decree and its availability in a location at each Facility where legal notices are posted; and (4) place a notice of lodging of the Consent Decree and its availability in the first two McWane corporate newsletters published after the Effective Date of the Consent Decree. McWane shall also provide a copy of this Consent Decree to the principal contact at any contractor or other agent retained to perform Work required under this Consent Decree, and shall condition any such contract upon performance of the Work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, McWane shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions

necessary to comply with the provisions of this Consent Decree, except as may be permitted under Section IX (Force Majeure) of this Consent Decree.

III. DEFINITIONS

8. Except as otherwise provided in this Consent Decree (including its Appendices), definitions for the terms presented herein shall be incorporated from the following statutes and their corresponding regulations: RCRA, as amended, 42 U.S.C. § 6903; TSCA, 15 U.S.C. § 2602; CAA, 42 U.S.C. § 7602; the reporting requirements of CERCLA, 42 U.S.C. § 9601; CWA, 33 U.S.C. § 1362; SDWA, 42 U.S.C. § 6903; EPCRA, 42 U.S.C. § 11049; Ala Code §§ 22-22-1, 22-28-2, and 22-30-3, and Iowa Code §§ 455B.131 et seq. and 455B.171 et seq. In the case of a conflict between the federal and state definitions, federal definitions shall control. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. ADEM shall mean the Alabama Department of Environmental Management and any of its successor departments or agencies;
- b. Complaint shall mean the complaint filed by the United States and the States in this action;
- c. Consent Decree or Decree shall mean this Decree and all Appendices attached hereto (listed in Section XXIII). In the event of any conflict between this Decree and any Appendix hereto, this Decree shall control;
- d. Day shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day

would fall on a Saturday, Sunday, or federal or applicable state holiday, the period shall run until the close of business of the next business day;

e. Defendant or McWane shall mean McWane, Inc. and its subsidiaries and operating divisions;

f. EPA shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

g. EPA EMS Standard means the EPA's *Compliance-Focused Environmental Management System - Enforcement Agreement Guidance* (Document number EPA-330/9-97-002R), Revised June 2005;

h. Effective Date is defined in Section XV;

i. EMS Element shall mean each of the individual subjects covered in the EPA EMS Standard;

j. Facility shall refer to any one or more of the following McWane Facilities:

EPA Region 2

Kennedy Valve Company, Elmira, New York

Amerex Corporation, Scotch Plains, New Jersey

Atlantic States, Phillipsburg, New Jersey

EPA Region 3

Tyler Pipe Company, Macungie, Pennsylvania

Manchester Tank Company, Petersburg, Virginia

EPA Region 4

M&H Valve Company, Anniston, Alabama

Union Foundry, Anniston, Alabama

Empire Coke Company, Sipsey Mine, Birmingham, Alabama

M&H Valve Company Landfill, 1251 Parkwood Drive, Anniston, Alabama

Empire Coke Company, Dilworth Mine, Sipsey, Alabama

Empire Coke Company, Dilworth Washer, Sipsey, Alabama

Empire Coke Company, Rice Chapel Mine, Sipsey, Alabama

Empire Coke Company, Tuscaloosa, Alabama

Amerex Corporation, Trussville, Alabama

Manchester Tank Company, Crossville, Tennessee

EPA Region 5

Manchester Tank Company, Quincy, Illinois

Manchester Tank Company, Bedford, Indiana

Manchester Tank Company, Elkhart, Indiana

Clow Water Systems Company, Coshocton, Ohio

EPA Region 6

Manchester Tank Company, Lubbock, Texas

Tyler Pipe Company, Tyler, Texas

EPA Region 7

Clow Valve Company, Oskaloosa, Iowa

Mitrisin Disposal Site, Oskaloosa, Iowa

Manchester Tank Company, Hannibal, Missouri

Tyler Pipe Company, Marshfield, Missouri

EPA Region 8

Pacific States Cast Iron Pipe Company, Provo, Utah

EPA Region 9

Anaco, Corona, California

Clow Valve, Corona, California

- k. Interest shall mean the interest specified in 28 U.S.C. § 1961.

Interest shall be compounded annually on October 1st of each year;

l. Notify and Submit and other terms signifying an obligation to transmit or communicate documents and information shall mean to deliver in-person, transmit by facsimile or electronically (if an email address is provided), deposit in the United States mail, or dispatch by express courier in accordance with Section XIV (Notifications) of this Consent Decree no later than the day that such transmission or communication is required by this Consent Decree. Should such day be a weekend day or a federal holiday, the delivery, deposit, or dispatch shall be due on the next business day. Response deadlines shall be calculated from the date of actual receipt of the document(s) requiring a response;

m. Paragraph shall mean a portion of this Decree identified by an Arabic numeral;

n. Parties shall mean the United States, the States, and McWane;

o. Section shall mean a portion of this Decree identified by a roman numeral;

p. States shall mean the Alabama Department of Environmental Management, on behalf of the State of Alabama, and the State of Iowa. Rights afforded to the States under this Consent Decree are limited to Facilities within the respective States;

q. United States shall mean the United States of America, acting on behalf of EPA;

r. Work shall mean any activity that McWane must perform to comply with the requirements of this Decree, including Appendices.

IV. CIVIL PENALTY

9. Within thirty (30) Days after the Effective Date of this Consent Decree, McWane shall pay the United States and the States the sum of \$4,000,000.00 as a civil penalty, together with Interest accruing from the date on which the Consent Decree is lodged with the Court, as set forth below:

a. McWane shall pay \$91,467.00 plus accrued Interest to the United States as a civil penalty related to the CWA SPCC violations alleged in the Complaint. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Alabama (1801 Fourth Avenue North; Birmingham, AL 35203). At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. McWane, Inc., and shall reference the civil action number and DOJ case number 90-5-1-1-08282, to the United

States in accordance with Section XIV of this Decree (Notices); by email to

acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

b. McWane shall pay \$10,941.00 plus accrued Interest to the "EPA Hazardous Substance Superfund" as a civil penalty related to the CERCLA Section 103 violations alleged in the Complaint, by FedWire Electronic Funds Transfer (EFT or wire transfer) to the U.S. Department of Justice account in accordance with written instructions to be provided by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Alabama (1801 Fourth Avenue North, Birmingham, AL 35203) to McWane following entry of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. McWane, Inc., and shall reference the civil action number, the EPA Regions in which the CERCLA 103 violations occurred, and DOJ case number 90-5-1-1-08282, to the United States in accordance with Section XIV of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

c. McWane shall pay \$3,472,789.00 plus accrued Interest to the United States as a civil penalty related to the balance of the claims alleged in the Complaint, by

FedWire Electronic Funds Transfer (EFT) to the U.S. Department of Justice, in accordance with written instructions to be provided by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Alabama (1801 Fourth Avenue North; Birmingham, AL 35203) to McWane following entry of the Consent Decree. At the time of payment, McWane shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, to the United States in accordance with Section XIV of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

The transmittal letter shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. McWane Inc., and shall reference the civil action number and DOJ case number 90-5-1-1-08282.

d. Within thirty (30) Days after the Effective Date of this Consent Decree, McWane shall pay the sum of \$424,803.00 plus accrued Interest as a civil penalty to the States as follows:

i. A check in the amount of \$332,000.00 plus accrued Interest payable to the Alabama Department of Environmental Management at:

Office of General Counsel
Attention: Rebecca E. Patty
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2059

ii. A check in the amount of \$92,803.00 plus accrued Interest payable to the State of Iowa at:

David R. Sheridan

Assistant Attorney General
Environmental Law Division
Lucas State Office Bldg.
321 E. 12th Street, Room 018
Des Moines, IA 50319

10. McWane shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal or state or local income tax.

V. COMPLIANCE REQUIREMENTS

11. Previously Completed Corrective Action. Prior to the lodging of this Consent Decree, McWane corrected nearly all the violations alleged in the Complaint by performing the corrective actions identified in Appendix 1 (Corrective Action Summary) of this Consent Decree, which includes a certification in compliance with Paragraph 35 that all corrective actions identified in Appendix 1 have been fully completed as of the date of lodging of this Consent Decree. McWane shall maintain documentation existing as of the date of lodging of the Consent Decree of all such corrective actions, in accordance with Section XI (Information and Document Retention) of this Decree.

12. Storm Water Pollution Prevention Plans (SWPPP). McWane has modified the SWPPP procedure in its EMS in accordance with comments provided by EPA. The modified procedure is provided in Appendix 2. McWane shall implement the modified procedure at all Facilities as set forth in Appendix 2 and shall continue to revise the SWPPP procedure as appropriate.

13. Clow Water Systems Company, Coshocton, Ohio. McWane shall operate and monitor the cupola furnace at the Clow Water Facility in Coshocton in compliance with the conditions in the Ohio EPA Permit to Install (Permit #06-07432) and Appendix 3 (CAA

Compliance Measures at Clow Water Systems, Coshocton, Ohio) of this Consent Decree, which requires, among other things, that emissions of particulate matter (PM) from the exhaust stack for the cupola furnace shall not exceed 0.078 lbs per ton of molten iron produced, and which establishes a schedule for stack tests to assess compliance with this emission limit.

14. Environmental Management Systems. During the course of negotiations culminating in this Consent Decree, McWane has continued to develop and implement, with EPA input and assistance, a comprehensive company-wide environmental management system ("EMS"), to promote compliance with all environmental requirements, achieve pollution prevention, and accomplish pollution reduction at McWane Facilities, and to enhance overall environmental performance.

a. McWane, as of the date of lodging of this Consent Decree has engaged a qualified EMS Auditor, Steve Rowley, approved by EPA, to conduct an Audit of the operation of the EMS at the Union Foundry Facility in Anniston, Alabama and at the Clow Water Facility in Coshocton, Ohio, to identify and evaluate program gaps relative to the EPA EMS Standard as more fully described in subparagraph (b), below. The EMS Auditor was required by EPA: (1) not to have been involved in the development of the EMS or the EPA EMS Standard; (2) not to have any direct financial stake in the outcome of the EMS Audit conducted pursuant to this Consent Decree; (3) to satisfy the EMS Auditor qualification requirements of Table 1 of ISO 19011 (First edition, 2002-10-01); (4) to have expertise and competence in regulatory programs under federal and state environmental laws; and (5) to have at least a bachelor's degree from an accredited institution. McWane has not had any other contractual or financial relationship with the EMS Auditor. Should Mr. Rowley be unable to complete his EMS Auditor responsibilities,

McWane shall submit to EPA for approval the name of a substitute EMS Auditor meeting the above qualifications.

b. The audit criteria shall consist of the EPA EMS Standard, and any other EMS standards or criteria deemed appropriate by McWane. The EMS Audit shall evaluate the adequacy of EMS implementation relative to the Audit criteria, from top management down, throughout each major organizational unit at the Union Foundry and Clow Water facilities, and identify areas of concern. McWane shall conduct an EMS Audit in accordance with the provisions of ISO 19011 (First edition, 2002-10-01), and shall address the following issues:

- i. Whether there is a defined system, subsystem, program, or planned task for each EMS Element as listed in the EPA EMS Standard;
- ii. To what extent the system, subsystem, program, or task has been implemented, and is being utilized according to the EPA EMS Standard;
- iii. Whether each Facility operation's internal self-assessment procedures for programs and tasks comprising the EMS meet the EPA EMS Standard;
- iv. Whether McWane is effectively communicating relevant environmental requirements to affected parts of the organization, contractors, and on-site service providers;
- v. Whether further improvements should be made to the EMS to conform to the provisions of the EPA EMS Standard;

vi. Whether there are material deviations from McWane's written requirements or procedures; and

vii. Whether there is a process in place to promote continual improvement.

c. Representatives from McWane (other than those employed at the Facility being audited), EPA, and the States may participate in the EMS Audit as observers and answer questions posed by or discuss issues raised by the EMS Auditor, but may not interfere with the independent judgment of the EMS Auditor. McWane shall notify EPA Headquarters and the appropriate EPA Region, in accordance with Section XIV (Notices) of this Consent Decree, at least ten (10) Days before the commencement of each on-site portion of the EMS Audit.

d. McWane shall direct the EMS Auditor to develop and submit simultaneously to McWane and EPA an EMS Audit Report for the EMS Audit for each selected facility within sixty (60) Days following the completion of the final on-site portion of the EMS Audit at that Facility. The EMS Audit Report shall present the audit findings and shall contain the following information:

- i. The audit's scope, including the period of time covered by the audit;
- ii. The date(s) the on-site portions of the audit were conducted;
- iii. The identification of audit team members for each facility;
- iv. The identification of McWane representatives and regulatory agency personnel observing the audit;
- v. The names of the individuals to whom the EMS Auditor provided the EMS Audit Report;

- vi. A summary of the audit process, including any obstacles encountered;
- vii. Detailed audit findings, including the basis for each finding and each area of concern identified. The auditor shall distinguish between material deviations from the EMS standard that must be corrected ("Audit Findings") and recommendations for optional EMS enhancements ("Recommendations");
- viii. Identification of any Audit Findings corrected, or Recommendations addressed, during the audit and a description of the corrective measures and when they were implemented; and,
- ix. Certification by the EMS Auditor that the EMS Audit was conducted in accordance with the provisions of ISO 19011 (First edition, 2002-10-01).

e. Within ninety (90) Days of receiving the EMS Audit Report, McWane shall develop and submit for approval to EPA, in consultation with the States, a response to the EMS Audit Report (the "Audit Response and Action Plan") addressing all Audit Findings, evaluating whether there is any need for conducting a root cause analysis, and identifying appropriate actions or measures that should be implemented to achieve conformance with the EPA EMS Standard, including a proposed schedule to complete such actions or measures. As an Appendix to the Audit Response and Action Plan, McWane shall include, for EPA's review and comment only, a response to the EMS Audit Report addressing all Recommendations, evaluating whether there is any need for conducting a root cause analysis or implementing measures to address the Recommendations, including a proposed schedule to complete such actions or measures. For the purposes of this subsection, all submissions should be provided to the EPA Special Litigation and Projects Division, as identified in Section XIV (Notices).

f. Upon written approval by EPA pursuant to Paragraph 15, McWane shall implement the Audit Response and Action Plan according to the approved schedule.

g. Following completion of corrective measures pursuant to the Audit Response and Action Plan, or in the event of an EMS Audit in which no instances of nonconformance with the EMS Standard are found, McWane shall submit a Request for Certification of EMS Implementation to the EMS Auditor. The EMS Auditor shall, as necessary, reinspect the respective Facility (i.e., conduct a "Certification Review") and submit to McWane a written statement identifying those Audit Findings that have been addressed and any that have not, including an explanation describing the failure to address or correct, as appropriate, any Audit Findings. McWane shall correct in a timely manner any outstanding Audit Findings identified during the Certification Review. When the EMS Auditor concludes that all Audit Findings have been addressed at the respective Facility, the EMS Auditor shall issue to McWane a Certification of EMS Implementation for the Facility, indicating that the EMS is fully implemented and conforms to the EMS Standard. Within ten (10) Days of receipt, McWane shall submit a copy of each Certification of EMS Implementation to EPA.

h. McWane shall develop, and submit to EPA for review and comment, proposed EMS improvements based on the results of the Audit Response and Action Plan, to be incorporated into McWane's EMS at all Facilities.

15. EPA Approval. After review of any work plan, report, or other item that is required to be submitted, or revised and resubmitted to EPA for approval pursuant to this Consent Decree, EPA, after consultation with the States, shall in writing: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission.

16. If a submission submitted pursuant to Paragraph 15 is approved, McWane shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 15(b) or (c), McWane shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to McWane's right to dispute only the specified conditions, or the disapproved portions and the severability of the approved portions, under Section X of this Decree (Dispute Resolution).

17. If the submission is disapproved in whole or in part pursuant to Paragraph 15(c) or 15(d), McWane shall, within forty-five (45) Days or such other period as the Parties agree to in writing, correct all deficiencies in the content of the submission and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, McWane shall proceed in accordance with the preceding Paragraph.

18. Any stipulated penalties applicable to the original submission, as provided in Section VIII of this Decree, shall accrue during the forty-five (45)-Day period or other agreed period, but shall not be payable unless the resubmission is untimely or is again disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of McWane's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

19. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with the States, may again require McWane to correct any deficiencies in the content of the submission in accordance with the preceding Paragraphs, or

may itself correct any deficiencies, subject to McWane's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs. If the resubmission is approved or corrected in whole or in part, McWane shall proceed in accordance with Paragraphs 16 and 17.

20. Permits. Where any compliance obligation under this Section requires McWane to obtain a federal, state, or local permit or approval, McWane shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

McWane may seek relief under the provisions of Section IX of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if McWane has submitted timely and complete applications and has taken all other actions necessary to timely obtain all such permits or approvals.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

21. McWane shall implement and complete the following Supplemental Environmental Projects ("SEPs") in accordance with the terms and schedules set forth in Appendix 5 of this Consent Decree. McWane may use contractors or consultants in planning and implementing these SEPs:

- Greenwood Park Storm Water Management Area ("Greenwood Park SEP");
- Mercury Emissions Reduction Projects at Pacific States Cast Iron Pipe Co. and Tyler Pipe (Texas) Facilities ("Mercury Reduction SEPs");

- Water Quality and Habitat Improvement in the Chemung SubBasin ("Chemung SubBasin SEP");
- Volatile Organic Compound Elimination - Replacement of Wet Paint Booth with Powder Coating Process at Manchester Tank & Equipment, Bedford, Indiana;
- Volatile Organic Compound Elimination - Replacement of Wet Paint Booth with Powder Coating Process at M&H Valve, Anniston, AL Facility (collectively "Paint Booth SEPs"); and
- Diesel Emissions Reduction Projects ("Diesel Emissions SEP")

22. With regard to each SEP described in Appendix 5, McWane certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA's approval of each SEP is complete and accurate; that the estimated costs of the SEPs (except for the Chemung SubBasin SEP and the Diesel Emissions Reduction Projects) have been calculated in good faith according to protocols consistent with those used by McWane to evaluate projects for corporate review and approval; that McWane in good faith believes that they comport with EPA's SEP policy regarding eligible SEP costs; and that McWane in good faith estimates the cost to implement each SEP as follows:

- Greenwood Park SEP - \$3,353,800;
- Mercury Reduction SEPs - no less than \$600,000, with a maximum expenditure of \$1,500,000 at each of the Pacific States Cast Iron Pipe Co. and Tyler Pipe Facilities;
- Chemung SubBasin SEP - \$90,250 for streambank projects;

- Diesel Emissions SEPs - \$90,000 for engine retrofits;
- Paint Booth SEPs - \$3,500,000 and \$620,000, respectively; and

b. that, as of the date of executing this Decree, McWane is not required to perform or develop any of the SEPs by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEPs are not projects that McWane was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that McWane has not received and will not receive credit for the SEP in any other enforcement action; and

e. that McWane will not receive any reimbursement for any portion of the SEP from any other person.

23. If McWane satisfactorily completes any SEP listed in Paragraph 21, but spends less than the maximum amount of the SEP cost estimate set forth in Paragraph 22, McWane may reallocate the cost savings to make up for any cost over-runs on any of the other SEPs listed in Paragraph 21, other than the Diesel Emissions SEP, provided that any reallocation of cost savings from either of the Paint Booth SEPs to either the Mercury Reduction SEP or the Chemung SubBasin SEP shall be augmented by McWane by an additional 25%. Any net cost savings after such re-allocation (and not including any augmentation) shall be spent on one or more of the following additional SEPs, which shall be completed in accordance with the terms and schedules set forth in Appendix 5:

- Caldwell Conservation Project

- Solid Waste Bunker Enclosure Project – Clow Water
- Additional Diesel Emissions Reduction Projects

24. SEP Completion Report. Within thirty (30) Days of the date of completion of each SEP in Appendix 5, McWane shall submit a SEP Completion Report to EPA, in accordance with Section XIV of this Consent Decree (Notices). The SEP Completion Report shall contain the following information:

- a. A narrative description of the development and/or implementation of the SEP, including a discussion of the process involved and the technology utilized;
- b. a description of any problems encountered in completing the SEP and the solutions thereto;
- c. final cost documentation for the SEP, as compared to the expected cost projected for the SEP as set forth in Paragraph 22(a);
- d. certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- e. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

25. EPA pursuant to Section XI (Information Collection and Retention) of this Consent Decree may require information in addition to that described in the preceding Paragraph, in order to evaluate McWane's completion report.

26. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 35.

27. After receiving the SEP Completion Report, and following consultation with the States, EPA shall determine and notify McWane whether or not McWane has satisfactorily completed the SEP in accordance with this Consent Decree.

28. As of the date of lodging of this Consent Decree and until EPA approval of the Final SEP Report, McWane shall maintain complete documentation of the final cost estimates and actual costs of design, construction, and operation for each SEP.

29. Any public statement, oral or written, in print, film, or other media, made by McWane making reference to the SEP under this Decree from the date of its execution of this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States et al v. McWane, Inc., taken on behalf of the U.S. Environmental Protection Agency to enforce federal environmental laws."

30. For federal income tax purposes, McWane agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

VII. REPORTING REQUIREMENTS

31. Within thirty (30) Days after the end of each calendar-quarter after the Effective Date of this Consent Decree and until completion of the obligations set forth in Sections IV (Civil Penalty), VI (SEPs) (through completion of construction), and VIII (Stipulated Penalties) and Paragraphs 12 (SWPPs) and 14-20 (EMS, Approval of Deliverables, and Permits), McWane shall submit to EPA a report for the preceding calendar quarter (quarters shall end on January 31, April 30, July 31, and October 31 of each year) and thereafter annually with respect to the requirements of Paragraph 13. This report shall include: (a) the status of any compliance measures required under Section V of this Decree (Compliance Requirements); (b) completion of milestones; (c) problems encountered or anticipated in complying with the terms of this Consent

Decree, together with implemented or proposed solutions; (d) status of any permit applications relating to the Work under this Consent Decree; (e) "significant matters" under the McWane EMS (a copy of the current protocol for which is provided in Appendix 4 of the CD); (f) a list of categories of reports submitted to State environmental agencies; and (g) a discussion of McWane's progress in satisfying its SEP obligations under Section VI of this Decree, including, at a minimum, a narrative description of activities undertaken, the status of any construction or compliance measures, the completion of any milestones set forth in the SEP Work Plan attached as Appendix 5 to this Decree, and a summary of SEP costs incurred since the previous report.

32. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the likely cause of the violation and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If McWane violates, or has reason to believe that it may violate, any requirement of this Consent Decree, McWane shall notify EPA and the States of such violation and its likely duration, in writing, within ten (10) business days of the day McWane first becomes aware of the violation, with an explanation of the violations likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, McWane shall so state in the report. McWane shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the day McWane becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves McWane of its obligation to provide the notice required by Section IX of this Consent Decree (Force Majeure).

33. Whenever any event affecting McWane's performance under this Decree, or the performance of its Facilities, may pose an imminent and substantial endangerment to the public health or welfare or the environment, McWane shall notify EPA Headquarters, as per Section XIV (Notices), as well as the appropriate EPA Emergency Response, orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after McWane first knew of, or should have known of, the violation or event posing the threat. This notice requirement is in addition to the requirement to provide notice of a violation of this Consent Decree set forth in the preceding Paragraph.

34. All reports and reporting obligations shall be submitted to the persons designated in Section XIV of this Consent Decree (Notices) for EPA Headquarters, the U.S. Department of Justice, and any EPA Regional and/or State representatives identified for the Region and State in which the applicable Facility is located.

35. Each report submitted by McWane under this Section shall be signed by a responsible corporate official of McWane (as defined in 40 C.F.R. § 270.11(a)) and shall include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency notifications where compliance would be impractical.

36. The reporting requirements of this Consent Decree do not relieve McWane of any reporting obligations required by any federal, state, or local law, regulation, permit, or other requirement.

37. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

38. McWane shall be liable for stipulated penalties to the United States for violations of this Consent Decree specified in Paragraphs 39-43, below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

39. Payment of Penalty. If McWane fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, McWane shall pay a stipulated penalty of \$1,000 per day for each Day that the payment is late for the first ten (10) Days, together with Interest. Thereafter, McWane shall pay \$5,000 per day for each Day that the payment is late, with Interest. These stipulated penalties shall also apply to any late payment of the civil penalties owed to the States. Any stipulated penalties due and owing to the United States or the States under this Paragraph shall be paid together with payment of the civil penalty, without demand by the United States or the States.

40. Payment Methods. Late payment of the civil penalty shall be made in accordance with Section IV (Civil Penalty), Paragraph 9(b). Stipulated penalties shall be paid in accordance

with Paragraphs 41, 42 and 43 below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Decree, or for stipulated penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 9 above.

41. Compliance Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Section V for the Clow Water Systems Company, Coshocton, Ohio:

(a) For failure to monitor pressure drop across the Cupola Scrubber System as specified in Appendix 3 to this Consent Decree:

<u>Period of Noncompliance</u>	<u>Penalty per Day</u>
1 through 3 Days per calendar quarter	\$1,500
4 through 10 Days per calendar quarter	\$2,500
Greater than 10 Days per calendar quarter	\$3,750

(b) For failure to operate the Cupola Scrubber System so that the 3-hour average total pressure drop across the entire System does not fall below the minimum levels specified in Appendix 3 to this Consent Decree:

<u>Period of Noncompliance</u>	<u>Penalty per Day</u>
1st Day in any calendar month	\$0
2 to 6 Days per calendar month	\$1,000
7 through 12 Days per calendar month	\$2,000
Greater than 12 Days per calendar month	\$3,000

(c) For failure to meet the emission limitation of 0.078 lbs/ton of particulate matter at the outlet from the Cupola Scrubber System as specified in Appendix 3:

<u>Period of Noncompliance</u>	<u>Penalty per Day</u>
1st 50 Days after a failed stack test	\$1,000(x)
Next 50 Days after a failed stack test	\$2,000(x)
Over 100 Days after a failed stack test	\$3,000(x)

--where x derives from the degree of deviation from the 0.078 emission limitation as follows:

For emissions between 0.079 and 0.120 lbs/ton, $x = 1$

For emissions between 0.121 and 0.160 lbs/ton, $x = 2$

For emissions between 0.161 and 0.200 lbs/ton, $x = 3$

For emissions above 0.201 lbs/ton, $x = 4$

(1) Rounding shall be as follows: 0.00049 and below shall be rounded down and 0.00050 and above shall be rounded up.

(2) Pursuant to Section 113(e)(2) of the CAA, penalties will accrue from the date of the failed stack test until McWane establishes through a subsequent stack test that "continuous compliance has been achieved."

(3) The compliance date is the date of the successful stack test, not the date on which the results showing compliance is received. This means the minimum period required to establish renewed compliance is fifty (50) Days.

(4) If a stack test shows the facility to be out of compliance following one or more stack tests showing compliance, then McWane shall have a grace period of fifty (50) Days to bring the facility back into compliance before penalties will start to accrue. Subsequent stack test failures will not be subject to this grace period unless McWane has passed at least one intervening stack test and can demonstrate 95% compliance with 3-hour average pressure drop and water flow operating parameter requirements since the prior successful stack test. Solely for

the purpose of determining whether a grace period exists for a subsequent stack test failure, Clow shall be deemed to be in 100% compliance if no three-hour average is out of compliance during the relevant period. If any three-hour average is out of compliance during the relevant time period, the ratio of actual number of minutes of operation in compliance to total minutes of operation shall be used to calculate whether Clow is within 95% compliance.

42. Reporting Requirements. The following stipulated penalties shall accrue per violation per day for each violation of the reporting requirements of Section VII of this Consent Decree (Reporting Requirements):

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th Day	\$1,000.00
15th through 30th Day	\$1,250.00
31st Day and beyond	\$2,000.00

43. Failure to meet SEP Requirements.

a. If McWane fails to satisfactorily complete the SEP in accordance with the terms and within the final deadlines set forth in Appendix 5, McWane shall pay stipulated penalties, upon written demand from the United States, in the following amounts for each Day the SEP remains incomplete:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 7th Day	\$100.00
8th through 21st Day	\$250.00
22nd through 30th Day	\$500.00
Greater than 30 Days	\$1,000.00

b. Should stipulated penalties accrued under the foregoing sub-paragraph exceed half the estimated cost of the SEP as set forth in Paragraph 22(a), or if the United States otherwise determines that McWane has abandoned the SEP and/or is no longer making a good faith effort to satisfactorily complete the project, then McWane shall pay, upon written demand from the United States, a stipulated penalty equivalent to 125% of the estimated SEP cost as identified in Paragraph 22(a), less any stipulated penalties paid pursuant to the foregoing sub-paragraph. This payment will substitute for the SEP completion requirements for that SEP.

c. Notwithstanding Paragraph 43(b), if the Bedford Paint Booth SEP is deemed abandoned pursuant to Appendix 5, Section I(5) but has been fully installed and operated for a total period of at least three (3) years prior to abandonment, then the stipulated penalty shall be equivalent to 25% of the estimated SEP cost identified in Paragraph 22(a). If the Bedford Paint Booth SEP has been fully installed but has operated for less than three years at the time of abandonment, then the stipulated penalty shall be equivalent to 75% of the estimated SEP cost. This Subparagraph applies only to the Bedford Paint Booth SEP.

44. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

45. If McWane fails to pay stipulated penalties according to the terms of this Consent Decree, McWane shall be liable for Interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

46. Stipulated penalties shall accrue regardless of whether the United States has notified McWane of a violation or made a stipulated penalty demand.

47. McWane shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand.

48. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Decree.

49. Stipulated penalties shall continue to accrue as provided in this Section for any failures of performance or violations that continue during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the United States that is not appealed to the Court, McWane shall pay accrued penalties determined to be owing by such agreement or decision, together with Interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of the United States' decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, McWane shall pay all accrued penalties determined by the Court to be owed, together with Interest, within sixty (60) Days of receiving the final appellate court decision.

50. McWane shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9(c), except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

51. McWane shall not deduct stipulated penalties paid under this Section in calculating its state and federal income tax.

52. Nothing in this Section shall be construed to limit the United States from seeking any remedy otherwise provided by law for McWane's failure to pay any stipulated penalties.

53. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for McWane's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of relevant statutory or regulatory requirements, McWane shall be allowed a credit for any stipulated penalties paid against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

54. A force majeure event is defined as any event arising from causes beyond the control of McWane, of any entity controlled by McWane, or of McWane's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite McWane's best efforts to fulfill the obligation. The requirement that McWane exercise best efforts to fulfill the obligation includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Force Majeure does not include McWane's financial inability to perform any obligation under this Consent Decree.

55. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, McWane

shall provide notice orally or by electronic or facsimile transmission as soon as possible, as provided in Section XIV of this Consent Decree (Notices), but not later than ten (10) business days after the time when McWane first knew that the event might cause a delay. Within thirty (30) Days thereafter, McWane shall provide to EPA Headquarters, DOJ, and any EPA Regional and/or State representatives identified for the Region and State in which the applicable Facility is located, a written explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; McWane's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of McWane, such event may cause or contribute to an endangerment to public health, welfare or the environment. McWane shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude McWane from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. McWane shall be deemed to know of any circumstance of which McWane, or any entity controlled by McWane, knew or should have known. This shall also apply to circumstances of which McWane's contractors knew or should have known and communicated to the McWane project manager.

56. If the United States, after consultation with the States, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the United States, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event

shall not, of itself, extend the time for performance of any other obligation. The United States will notify McWane in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

57. If the United States does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the United States will notify McWane in writing of its decision.

58. If McWane elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of the United States' notice. In any such proceeding, McWane shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that McWane complied with the requirements of Paragraphs 54 and 55, above. If McWane carries this burden, the delay at issue shall be deemed not to be a violation by McWane of the affected obligation of this Consent Decree identified to the United States and the Court.

X. DISPUTE RESOLUTION

59. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve all disputes arising under or with respect to this Consent Decree. McWane's failure to seek resolution of a dispute under this Section shall preclude McWane from raising any such issue as a defense to an action by the United States to enforce any obligation of McWane arising under this Decree.

60. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations, which may include any third-party assisted, non-binding alternative dispute resolution process agreeable to the United States and McWane. The dispute shall be considered to have arisen on the date that the United States has received a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date that the United States receives the Notice of Dispute, unless that period is modified by written agreement. If McWane and the United States, following consultation with the States, cannot resolve a dispute by informal negotiations, then the position of the United States shall be considered binding, unless, within thirty (30) Days after the conclusion of the informal negotiation period, McWane invokes the formal dispute resolution procedures as set forth below.

61. Formal Dispute Resolution. McWane shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include any factual data, analysis, or opinion supporting McWane's position and any supporting documentation relied upon by McWane.

62. The United States, following consultation with the States, shall serve its Statement of Position within forty-five (45) Days of receipt of McWane's Statement of Position. The United States' Statement of Position shall include or clearly reference any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute. The United States Statement of Position shall be binding

on McWane, unless McWane files a motion for judicial review of the dispute in accordance with the following Paragraph.

63. McWane may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) business days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of McWane's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

64. The United States shall respond to McWane's motion within the time period allowed by the Local Rules of this Court. McWane may file a reply memorandum, to the extent permitted by the Local Rules.

65. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. In any dispute accorded review on the administrative record under applicable principles of administrative law, EPA shall compile an administrative record of the dispute containing all Statements of Position, including supporting documentation and referenced data or information, and McWane shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. In any other dispute, McWane shall bear the burden of demonstrating that its position complies with and furthers the objectives of this Consent Decree.

66. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of McWane under this Consent Decree, unless and until final resolution of the dispute so provides or unless ordered by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 49. If McWane does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

67. The United States, and the States, and their representatives, including attorneys, contractors, and consultants, from the date of lodging of this Consent Decree shall have the right of entry into McWane Facilities at all reasonable times, upon presentation of appropriate identification, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify corrective action identified in Appendix 1 and any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain documentary evidence, including photographs and similar data related to activities required under this Consent Decree; and
- d. assess McWane's compliance with this Consent Decree.

Upon arrival, if the United States has not previously given notice to McWane of the entry authorized by this paragraph, the United States shall notify McWane, by e-mail or phone, of the entry. Notice under this paragraph shall be given to Jeet Radia (at JRadia@mcwane.com or (205) 323-8284) or to any successor designated by McWane in writing.

68. Unless otherwise provided in this Consent Decree, until five years after completion of the obligations set forth in Sections V (Compliance Requirements), VI (SEPs) (through completion of construction) and VIII (Stipulated Penalties), McWane shall retain, and shall contractually require its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to McWane's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, McWane shall provide, within thirty (30) Days or such other period as the Parties agree to in writing, copies of any non-privileged documents, records, or other information required to be maintained under this Paragraph.

69. At the conclusion of the information-retention period provided in the preceding Paragraph, McWane shall notify EPA at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, McWane shall deliver any such documents, records, or other information to EPA. McWane may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If McWane asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or

information; and (6) the privilege asserted by McWane. However, no documents, records, or other information required to be generated or received pursuant to this Consent Decree shall be withheld on grounds of privilege.

70. McWane may also assert, pursuant to the procedures and standards set forth in 40 C.F.R. Part 2 and any applicable State law, that information required to be provided under this Section is protected as Confidential Business Information ("CBI").

71. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the States pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of McWane to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

72. Except as provided in Paragraph 73 this Consent Decree resolves the civil claims of the United States and the States for the violations specifically alleged in the Complaint filed in this action through the date of the lodging of the Consent Decree. No other violations, if any, are resolved by this Consent Decree.

73. This covenant not to sue is expressly conditioned upon complete and satisfactory performance of the requirements set forth herein. The United States and the States reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the States to obtain penalties or injunctive relief under the federal environmental statutes or their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 72. The United States and the States further retain all

authority and reserve all rights to take any and all actions authorized by law to protect human health and the environment, including all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, McWane's Facilities, whether related to the violations addressed in this Consent Decree or otherwise. The United States further retains all authority to seek future injunctive relief and corrective action relating to exceedences of maximum allowable concentrations of arsenic in groundwater at the Clow Water Facility in Coshocton, Ohio, as described in the Complaint and to seek penalties for any future such violations; however, any claim for penalties for violations occurring prior to the Effective Date of this Consent Decree is resolved by this Consent Decree.

74. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. McWane is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and McWane's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as specifically set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that McWane's compliance with any aspect of this Consent Decree will result in compliance with any provisions of federal, state, or local laws, regulations, or permits.

75. This Consent Decree does not limit or affect the rights of McWane or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against McWane, except as otherwise provided by law.

76. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

77. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties or costs due under this Consent Decree but not paid by McWane.

XIV. NOTICES

78. Unless otherwise specified herein, whenever notifications, submissions, or communications as defined in Paragraph 8(l) are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Re: DOJ No. 90-5-1-1-08282

Deborah Reyher
Fax - (202) 514-0097
if by regular mail or post office express mail:
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
if by private overnight service:
601 D Street, NW, 2nd floor
Washington, D.C. 20004
Deborah.Reyher@usdoj.gov

United States Attorney for Northern District Alabama
1801 Fourth Avenue North
Birmingham, AL 35203

To EPA:

Director
Special Litigation and Projects Division
Office of Civil Enforcement
Mail Code 2248-A
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington D.C. 20460

To Region 5:

Compliance Tracker, AE-17J
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Robert A. Kaplan
Regional Counsel
U.S. Environmental Protection Agency
Region 5
Mail Code C-14J
77 West Jackson Boulevard
Chicago, Illinois 60604

To the State of Alabama:

Rebecca E. Patty
Associate General Counsel
Alabama Department of Environmental Management
1400 Coliseum Blvd.
Montgomery, AL 36110-2059

To the State of Iowa:

Brian Hutchins
Air Compliance and Monitoring Section
Iowa Department of Natural Resources
Air Quality Bureau
7900 Hickman Road, Suite 1
Windsor Heights, IA 50324

David R. Sheridan
Assistant Attorney General
Environmental Law Division

Iowa Department of Justice
Lucas State Office Building
321 East 12th Street, Room 018
Des Moines, Iowa 50319

To McWane:

Jeet Radia
McWane, Inc.
1143 Vanderbilt Road
Birmingham, AL 35234-2357
jradia@mcwane.com

James M. Proctor II
McWane, Inc.
2900 Hwy 280, Suite 300
Birmingham, AL 35223
JMProctor@mcwane.com

79. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

80. The Parties may modify this Section XIV (Notifications) and Paragraph 8(l) of this Consent Decree by written agreement.

XV. EFFECTIVE DATE

81. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that McWane hereby agrees that it shall be bound, from the date of its execution of this Decree, to perform obligations scheduled in this Consent Decree to occur prior to the Effective Date.

XVI. RETENTION OF JURISDICTION

82. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders

modifying this Decree, pursuant to Sections X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

83. Except as specifically provided for herein, there shall be no modifications or amendments of this Consent Decree without the written agreement of the Parties to this Consent Decree. Changes to provisions of this Consent Decree that expressly allow for change upon written agreement, and changes to the provisions of Appendices 1 through 5 hereto, may be made without approval by the Court upon written agreement between the Parties, and upon execution shall become enforceable under this Consent Decree and shall be filed with the Court. Any other modifications agreed to by the Parties shall be effective only upon approval by the Court. A Party's refusal to agree to a modification of this Consent Decree shall not be subject to dispute resolution or judicial review.

84. In the event that a transferee of property under Section II of this Consent Decree should desire to become a party to this Consent Decree and subject to all its terms and provisions, it may do so upon written approval of the United States pursuant to Section II (Applicability) of this Consent Decree, in which event a supplemental signature page will be affixed to this Consent Decree and filed with the Court.

XVIII. TERMINATION

85. This Consent Decree may be terminated when the United States determines, after consultation with the States, that McWane has satisfactorily completed performance of its compliance, SEP, and reporting obligations under Sections V, VI and VII of this Decree, provided that McWane has fulfilled all other obligations of this Decree, including payment of the civil penalty under Section IV of this Decree and any outstanding stipulated penalties under Section

VIII. The Parties shall file with the Court an appropriate stipulation reciting that the requirements of the Consent Decree have been met and requesting termination of the Decree.

86. If the United States, after consultation with the States, does not agree that the Decree may be terminated, McWane may invoke Dispute Resolution under Section X of this Decree. In such case, all time periods and deadlines established under Section X may be extended by sixty (60) Days, or more by the agreement of the Parties.

XIX. PUBLIC PARTICIPATION

87. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. McWane consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified McWane in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

88. Each undersigned representative of McWane, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, or her designate, and the States certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

89. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. McWane agrees to accept service of process by mail with respect to all

matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

90. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

91. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the States, and McWane. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXIII. APPENDICES

The following Appendices are attached to and part of this Consent Decree:

Appendix 1 is McWane's Corrective Action Cost Synopsis;

Appendix 2 is McWane's modified Storm Water Pollution Prevention Plan procedure;

Appendix 3 is the CAA Compliance Measures at Clow Water Systems, Coshocton, Ohio;

Appendix 4 is McWane's current EMS protocol for Notification of Significant Matters; and

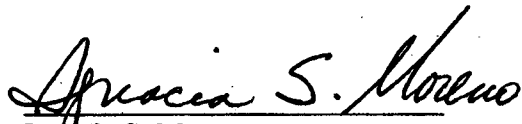
Appendix 5 is the summary of Supplemental Environmental Projects.

Dated and entered this __ day of _____, 2010.

UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF ALABAMA

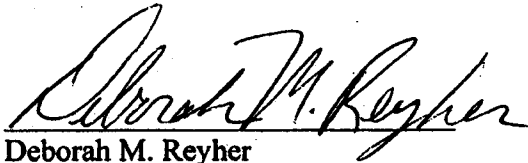
FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: 6/25/10



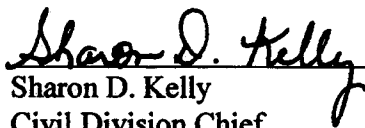
Ignacia S. Moreno
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Avenue, NW
Washington, D.C. 20530

Date: 6/30/10



Deborah M. Reyher
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
(202) 514-4113


JOYCE WHITE VANCE
United States Attorney
for the Northern District of Alabama

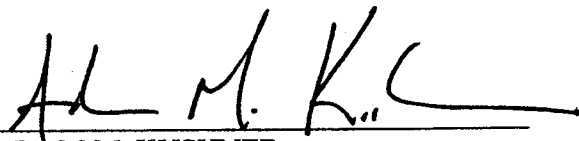

Sharon D. Kelly
Civil Division Chief
Northern District of Alabama

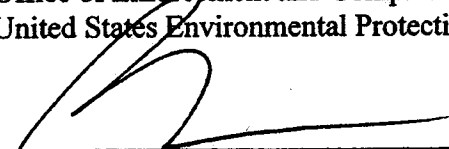
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

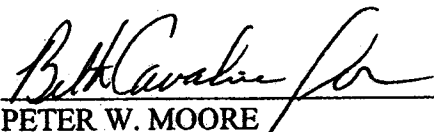
WE HEREBY CONSENT to the entry of the Consent Decree in the United States v.
Civil Action No. 7, subject to the public notice and comment requirements of 28 C.F.R.
§ 50.7. CV-10-JEO-1902-S

FOR THE UNITED STATES OF ENVIRONMENTAL PROTECTION AGENCY:

DATE: July 3, 2010 
CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

DATE: June 24, 2010 
ADAM M. KUSHNER
Office Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

DATE: June 24, 2010 
BERNADETTE RAPPOLD
Division Director
Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

DATE: June 24, 2010 
PETER W. MOORE
Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

DATE:

Walter W. Kandyk

Bharat Mathur

Acting Regional Administrator

U.S. Environmental Protection Agency, Region 5

77 West Jackson Boulevard

Mail Code R-19J

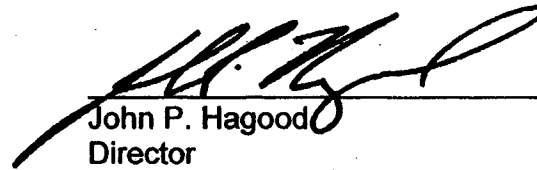
Chicago, Illinois 60604

FINAL CONSENT DECREE - March 15, 2010

FOR THE STATE OF ALABAMA

Date: _____

4/2/10



John P. Hagood

Director

Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2059

FOR THE STATE OF IOWA.

Date: 6/25/10


THOMAS J. MILLER
ATTORNEY GENERAL
OF THE STATE OF IOWA


DAVID R. SHERIDAN

Assistant Attorney General
Environmental Law Division
Iowa Department of Justice
Lucas State Office Building
321 E. 12th Street, Ground Flr.
Des Moines, IA 50319
(515) 281-5351

FINAL CONSENT DECREE - March 15, 2010

FOR McWANE:


Ruffner Page, President and CEO

Date: 3/24/10